

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**

**March 26, 2003**

**IN RE:**

**APPLICATION FOR APPROVAL OF THE INDIRECT  
TRANSFER OF CONTROL OF BIRCH TELECOM OF  
THE SOUTH, INC. TO IONEX  
TELECOMMUNICATIONS, INC.**

**DOCKET NO.  
03-00062**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on February 18, 2003 for consideration of the *Application for Approval of Transfer of Control* (the "*Application*") filed by Ionex Telecommunications, Inc. ("Ionex"). The *Application* was considered pursuant to the provisions of Tenn. Code Ann. § 65-4-113, which requires Authority approval of a transfer of authority to provide utility services.

**Requirement of and Standards for Authority Approval**

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

- (a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the

authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

### **The Application**

In the *Application*, which was filed on January 23, 2003, Ionex requests Authority approval of an indirect transfer of control of Birch Telecom of the South, Inc. ("Birch South") to Ionex. This transfer will be accomplished through a merger procedure in which Birch South's parent, Birch Telecom, Inc. ("Birch"), will become a wholly owned subsidiary of Ionex. Upon completion of this transfer, Birch South will continue to provide intrastate telecommunications services in Tennessee under the same name and pursuant to its existing authorizations and tariffs.

According to the *Application*, Birch, a Delaware corporation with its principal offices located in Kansas City, Missouri, wholly owns subsidiaries that offer state-of-the-art telecommunications services primarily to small and mid-sized businesses in the Midwest and Southeastern United States. Birch South is a wholly owned subsidiary of Birch and is a Delaware corporation with its offices also located in Kansas City, Missouri. Birch South was granted authority to provide telecommunications services in Tennessee by Order dated July 20, 2000, in Docket No. 00-00341. In Tennessee, Birch South provides local and long distance telephone service to residential and business customers.

The *Application* states that Ionex is a privately held Delaware corporation headquartered in Addison, Texas that functions as a holding company for several operating entities. Ionex provides voice and data communications services, through its subsidiaries, to more than 60,000 small and medium sized business customers. Ionex also offers local and long distance telephone service, enhanced voice services, and high-speed data services over its own packet-switched network.

### **Public Interest Considerations**

According to the *Application*, approval of the transfer of control of Birch and the consequent indirect transfer of Birch South to Ionex is in the public interest. Birch and Ionex will be able to take advantage of greater economies of scale and Birch will have access to additional capital from a well-financed parent, Ionex. Birch's subsidiaries will continue to provide service to their customers under the same names and with the same operating authorization, and there will be no change in the rates, terms or conditions of service to Birch's customers as a result of the transaction.

### **Findings**

The Authority considered this matter at the February 18, 2003 Authority Conference. Based upon careful consideration of the *Application* and of the entire record of this matter, the Authority finds and concludes as follows:

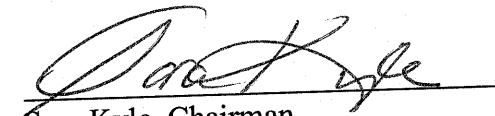
1. The Authority has jurisdiction over the subject matter of this *Application* pursuant to Tenn. Code Ann. § 65-4-113;
2. Birch Telecom of the South, Inc. has been granted authority to provide resold telecommunications services in Tennessee;

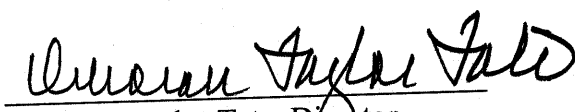
3. Ownership of the parent company of Birch Telecom of the South, Inc. will be acquired by Ionex Telecommunications, Inc., resulting in a transfer of the authority to provide utility services that has been granted to Birch Telecom of the South, Inc.; and

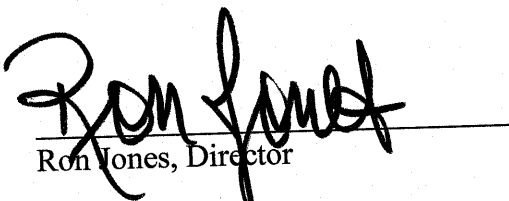
4. The transfer of authority will benefit the consuming public.

**IT IS THEREFORE ORDERED THAT:**

The *Application* of Ionex Telecommunications, Inc. for approval of the transfer of authority described herein is approved.

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Ron Jones, Director